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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,669	03/05/2002	Troy S. Prince	ORBITAL-009	7746
7590	12/29/2003			EXAMINER
Brian M. Kolkowski, Esq. ORBITAL RESEACH INC. 4415 EUCLID AVENUE CLEVELAND, OH 44103			FERNSTROM, KURT	
			ART UNIT	PAPER NUMBER
			3712	
			DATE MAILED: 12/29/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/091,669	PRINCE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Kurt Fernstrom	3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1,2,5-8,11-13 and 16 is/are allowed.
- 6) Claim(s) 3,4,9,10,14 and 15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 4, 9, 10, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the term "about" renders the claims indefinite because no standard is set forth for determining what dimensions would fall within the claimed ranges. See MPEP 2173.05(b).

### ***Allowable Subject Matter***

3. Claims 1, 2, 5-8, 11-13 and 16 are allowed.
4. Claims 3, 4, 9, 10, 14 and 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.
5. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose or suggest a device having all of the limitations of claims 1 and 7, for essentially the reasons set forth in applicant's Remarks filed on October 16, 2003, Paper No. 6. As noted by applicant, Nutzel fails to disclose an elastomeric polymer sealed about each opening, nor does Nutzel disclose a motivation for providing such a feature to the device of Schmidt.

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Applicant's contention that there is no motivation or suggestion to combine the teachings of Schmidt and Nutzel to form the claimed invention are persuasive. As a result, the claims contain allowable subject matter.

***Response to Arguments***

6. Applicant's arguments filed on October 16, 2003 with respect to the rejections under 35 USC 112 have been fully considered but they are not persuasive. Applicant is correct that the proper test for determining acceptable claim language is whether one of ordinary skill would understand what is claimed in light of the specification. However, the specification provides no guidance on what is considered to be "about" 500,000 psi, or what is considered to be "about" .001 mm. Presumably 500,001 psi would be considered to be "about" 500,000 psi. Would 501,000 psi fall within the claim language? Would 510,000? Would 550,000? In each claim, applicant is attempting to claim a range without clearly defining the boundaries of the range. Applicant's demand for an affidavit under 37 CFR 1.105 (d) (2) is misplaced; the rejection is based not upon personal knowledge of the examiner but rather the failure of the claim language to adequately define the scope of the rejected claims.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303.

KF

December 23, 2003

*Kurt Fernstrom*